

## THE CONFUSION OF HOMELAND SECURITY WITH HOMELAND DEFENSE

BY

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USAWC STRATEGY RESEARCH PROJECT

**THE CONFUSION OF HOMELAND SECURITY WITH HOMELAND DEFENSE**

by

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## **ABSTRACT**

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The tenets of official United States counterterrorist policy states the government will make no concessions or deal with terrorists, will bring them to justice for their crimes, will isolate and apply pressure to states that sponsor terrorism, and will bolster the counterterrorist capabilities of countries willing to work with the United States. Although these tenets are sound principles, their application—specifically, overseas and/or beyond the borders of the United States—constitutes homeland defense and undeniably the purview of Title 10 United States Code (USC) armed forces when it relates to defending the United States from nation states or states acting as surrogate agents for non-state actors. However, the American public's perspective of terrorism is non-Clausewitzian; they do not see it as a continuation of national policy. Therefore, the use of Title 10 forces for homeland security suggests a misunderstanding of the nature of terrorism. Terrorism within the country's borders is a criminal act and the proper responsibility of civil law enforcement.



## THE CONFUSION OF HOMELAND SECURITY AND HOMELAND DEFENSE

The US Constitution is a remarkable document—and a demanding one for those of us who choose to make our career in the military. We are required to pledge our sacred honor to a document that looks at the military...as a necessary, but undesirable, institution, useful in times of crises; and to be watched carefully at all other times.<sup>1</sup>

—Gen. Colin Powell  
Chairman Joint Chiefs of Staff

The United States government, backed by the massive support of the American public, took a hard line against international terrorism after the events of September 11, 2001 (9/11). The tenets of official United States counterterrorist policy are that the government will make no concessions or deals with terrorists, will bring them to justice for their crimes, will isolate and apply pressure on states that sponsor terrorism, and will bolster the counterterrorist capabilities of countries willing to work with the United States.<sup>2</sup> Although these tenets are sound principles, their application—specifically overseas and/or beyond the borders of the United States—constitutes homeland defense and undeniably the purview of Title 10 United States Code (USC) forces when it relates to defending the United States from nation states or states acting as surrogate agents for non-state actors. However, the American public's perspective toward terrorism, at least within United States borders, is non-Clausewitzian; they do not see it as a continuation of national policy. Therefore, the use of Title 10 forces for homeland security suggests a misunderstanding of the nature of terrorism. Terrorism within the country's borders is a criminal act and the proper responsibility of civil law enforcement. Further terrorism cannot be “defeated”—it is reducible and can be controlled, but never eliminated. However, elimination is the only real defeat of the tactic of terrorism.

Prior to 9/11, the role of the military in response to domestic incidents was outlined in Department of Defense (DOD) Directive 3025.1, Military Support to Civil Authorities; 3025.12, Military Assistance for Civil Disturbances; and 3025.15, Military Assistance to Civil Authorities. In each of these directives, the vision and direction for military formations were to act as a force in support of a lead civil agency if additional support were to become necessary and requested. Efforts to use Title 10 forces directly are inappropriate. Moreover, the implementation of Northern Command (NORTHCOM) with a Title 10 command structure is not an effective application of resources. Indeed, in a time of actual emergency, such a structure would be ineffective.

The Army—along with the Navy, Air Force, and Marines—exists to win the nation’s wars and defeat an enemy in the enemy’s home base. This is and always should be its principal mission. The Army’s recent transformation White Paper entitled “Concepts of the Objective Force” states, “The Army must remain optimized for major theater war”; that theater is abroad. Any effort at extracting an existential purpose for the Army to be directly engaged in homeland security is an extrapolation of domestic emphasis from the Constitution and potentially an impediment to the effective use of constitutionally intended forces<sup>3</sup> as well as unnecessary effort and cost.

### The War on Terror and Its Danger to American Democracy

Former Secretary of Defense Donald Rumsfeld declared, “The nation is at war with terrorist organizations that pose a threat to its security....”<sup>4</sup> References such as “[i]nside the United States, where the war began”<sup>5</sup> were specifically intended to rally the American public to the cause. More directly, such an evocation of “war terms” provided a means for the government to use the resources of the Department of Defense (DOD)

in the initial “days of the battle” to protect American life and property. Since 9/11, no clear taxonomy defining— without ambiguity— who terrorist states are has emerged; however, the same cannot be said of criminal acts. Every nation with laws and rules has criminal acts and actions codified within the court or legal system of that nation or state.

### Terrorism Defined

An intellectually honest effort to define terrorism first requires a common basis of the term *terrorism* with a common conceptualization and reference point. Terrorism is defined in the Code of Federal Regulations (CFR) as “...the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives” (28 C.F.R. Section 0.85). All laws applicable to the United States derive from the United States Constitution, and all direct laws adopted or enacted by the Congress of the United States exist in codified form in the United States Code (USC), a compilation and codification of the general and permanent federal law of the United States. USC Title 18, Part 1, Chapter 113B, § 2331 makes a clear distinction between international terrorism, domestic terrorism, and acts of war as follows:

- (1) The term *international terrorism* means activities that
  - (A) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;
  - (B) Appear to be intended
    - (i) To intimidate or coerce a civilian population;
    - (ii) To influence the policy of a government by intimidation or coercion; or

- (iii) To affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) Occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;
- (2) The term *national of the United States* has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;
- (3) The term *person* means any individual or entity capable of holding a legal or beneficial interest in property;
- (4) The term *act of war* means any act occurring in the course of
  - (A) Declared war;
  - (B) Armed conflict, whether or not war has been declared, between two or more nations; or
  - (C) Armed conflict between military forces of any origin; and
- (5) The term *domestic terrorism* means activities that
  - (A) Involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B) Appear to be intended
    - (i) To intimidate or coerce a civilian population;
    - (ii) To influence the policy of a government by intimidation or coercion; or
    - (iii) To affect the conduct of a government by mass destruction, assassination, or kidnapping; and
  - (C) Occur primarily within the territorial jurisdiction of the United States.

*Terrorism*, as defined by the office of Federal Emergency Management Agency (FEMA), is “the use of force or violence against persons or property in violation of the criminal laws of the United States for purposes of intimidation, coercion, or ransom.”

Acts of terrorism include threats of terrorism, assassinations, kidnappings, hijackings, bomb scares and bombings, and cyber attacks (computer-based) as well as the use of chemical, biological, nuclear, and radiological weapons.<sup>6</sup>

The National Response Plan defines *terrorism* as any activity that:

(1) involves an act that

(a) is dangerous to human life or potentially destructive of critical infrastructure or key resources;

(b) is a violation of the criminal law of the United States or any state or other subdivision of the United States; and

(2) appears to be intended

(a) to intimidate or coerce a civilian population;

(b) to influence the policy of a government by intimidation or coercion;

(c) to affect the conduct of a government by mass destruction, assassination, or kidnapping.<sup>7</sup>

The FBI categorizes terrorism as either domestic or international, depending on the origin, base, and objectives of the terrorist organization. The FBI's definition of *terrorism* is consistent with [18 U.S.C. § 2331(5)]: "Domestic terrorism refers to activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state; appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States."<sup>8</sup>

Despite these extensive definitions of terrorism and the related terms, no internationally accepted standard definition of *terrorism* has been established. Within the United States, neither equivocation nor amphibology has emerged regarding terrorism; terrorism in any form is a criminal act *per se*. This paper examines the

position that the so-called War on Terror is not new and the term has, in fact, blurred the meaning of “Homeland Defense” versus “Homeland Security” and obfuscated the fundamental issue that terrorism is a criminal act. Moreover, the constant effort and changes advanced to define and/or fight a War on Terror to include USC Title 10 forces within the borders of the United States has weakened the nation, creating a division in the nation regarding homeland security—namely, the domain of civilian law enforcement—and homeland defense—namely, the domain of the DOD.

Although changing environments and threats will always effect or result in changes to domestic law, modern-day military leadership is far too quick to cast a net over criminal states and gangs. Military leadership often attempts too quickly to establish connections between politics and war where such individuals evince political behavior—as Karl Von Clausewitz discussed in On War. “The country’s military capabilities must be able to honor traditional security commitments such as those with Korea, NATO, and Japan. Recent conflicts in Afghanistan, Iraq, Lebanon, and elsewhere have highlighted the need for additional capabilities in irregular, asymmetric and counter-insurgency warfare including stabilization and reconstruction operations”<sup>9</sup>. Limited Title 10 military resources, regardless of capability, must not be squandered within the continental borders performing a mission that technically, intellectually, and lawfully is a battle for law enforcement and civil authority—which, when directed, legitimately incorporates the National Guard (NG) in Title 32 USC status.

#### Homeland Defense, Title 32 Status and Status Quo Ante Bellum

Navigating the complete historical path of the federal government in advancing the militia or funding is beyond the scope of this paper. Furthermore, this narrative is not

intended to argue in favor of or opposition to the NG in its present form under Title 32. Rather, the discussion herein aims to present a compendious and taxonomic schema required to advance any discussion of NG and the relationship with local authority and Title 10 forces, highlighting the juxtaposition at which federal money for the NG changed from its original funding to train for a wartime mission to its current operational status. Beyond the predicate, the NG in support of civil authority is constitutionally proper and does not raise Posse Comitatus Act (PCA) issues—as Title 10 forces would; beyond this, no parochial position is advanced.

Title 32 authorities and the NG derive explicitly (in the former) or implicitly (in the latter) from the Constitution within the militia clauses. Equally explicit is the federal government's control in that Congress is "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions"<sup>10</sup> and "[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States...."<sup>11</sup> Although Congress clearly was to provide for governing or controlling the militia while in the federal service, the states retained control in "the Appointment of the Officers and the Authority of training the militia according to the discipline prescribed by Congress."<sup>12</sup> These provisions serve as the constitutional basis of Title 32—the use of federal funds to "organize," "arm," and "discipline" militias whereas the states maintain control of their militias while "training" to federal standards.

In 1791, Congress affirmed the necessity of the militias for the nation's future, stating that, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."<sup>13</sup> The United

States Constitution and the Second Amendment provided authority "to provide" for the militia, yet both remained silent on the actual funding of militias' "training" to federal standards while under state control. Moreover, no federal funding was provided for the individual militias performing state-controlled domestic operations to ensure "the security of a free state."<sup>14</sup>

As the nation began to recover from its internal wars of the 19<sup>th</sup> century, Congress engaged in acts intended to increase authority for federal funding to the militias. In 1887, Congress first authorized federal funding of the militias within states. The Secretary of War directed \$400,000 apportioned to the states and territories for "providing arms, ordinance stores, quartermasters stores, and camp equipage for issue to the militia"<sup>15</sup> and annually required the governors to account for the materials that remained property of the United States.<sup>16</sup> After the Spanish-American War, Congress recognized the need for reforms:

the Dick Act that provided for an organized militia—to be named the National Guard—that would conform to the organization of the Army, be equipped through federal funds, and be trained by Army instructors...provisions that when on active duty, the reservists would be guided by Army rules and regulations and would receive the same pay as that given to Army soldiers, and a new requirement for the performance of 24 drills per year and a five-day summer camp. The act also gave states' governors certain powers over their Guard units, such as the power to excuse their troops from any of the drills or summer camp.<sup>17</sup>

The Dick Act—also known as the Efficiency of Militia Bill H.R. 11654 of June 28, 1902, sponsored by United States Senator Charles Dick—gave federal status to the militia directed at promoting the efficiency of the militia and served as the basis for the federally funded state controlled Title 32 "training status," replacing the 1792 Militia Act.<sup>1819</sup> Congress amended and strengthened the Dick Act when it passed the National Defense Act of 1908 on May 27, 1908, changing the law restricting the NG from a

maximum of nine months of federal service, within or outside of the United States territory, to service as long as the president deemed necessary.<sup>20</sup>

Congress subsequently passed the National Defense Act (NDAA) of 1916 in response to several key events, including political reaction to a study submitted by Secretary of War Lindley M. Garrison in 1915 entitled "A Proper Military Policy for the United States." Unlike prior studies, the proposals for reform in Garrison's study turned away from the upsonian idea of an expansible Regular Army to promote the more traditional American concept of a citizen army as the keystone of an adequate defense force. Garrison proposed more than doubling the Regular Army, increasing federal support for the National Guard, and creating a new 400,000-man volunteer force (called the Continental Army)—a trained reserve under federal control as opposed to the state-controlled Guard. Garrison's proposal drew minor support from the Senate, yet it could not overcome adamant opposition in the House of Representatives, which overwhelmingly favored a strong NG as the nation's internal protector. Although President Wilson refused Garrison's full idea, he accepted a small increase in the Regular Army and the concept of a Continental Army.

Another factor leading to the NDAA of 1916 stemmed from a legal opinion by then Attorney-General Wickersham, who opined it to be an unconstitutional use of the military "to use the militia for the purpose of invading a foreign country or carrying on an offensive war outside the jurisdiction of the United States."<sup>21</sup> Consequently, the NDAA required increased federal responsibility for the NG, acceptance of federal standards, and agreement by the NG to respond to a presidential call to service.<sup>22</sup> The act separated the Army, the reserves, and the militia and "federalized" the NG, thereby

requiring members of the NG to take an oath to defend both the constitutions of the United States and their individual states as well as obey the orders of the president of the United States in addition to the governor of their respective states. This dual oath formally recognized the dual federal and state missions and dual control authorities of the NG.<sup>23</sup> NG officers remained under the control of their respective states as constitutionally directed; however, in order to retain their commissions, they were required to take the required oath. The 1916 NDAA was amended in 1933, when the NG of the United States (NGUS) became a federal reserve component and members could be ordered into federal service in their NGUS reserve status.

Although the NDAA formally combined the status, federal funds remained authorized only for federal missions, and individual states are required to fund their own NG during their militia-based domestic operations.

National Guard forces perform their...domestic operational missions when their governors mobilize them in state active duty controlled (SAD) state funded status. State laws dictate when state authorities may call upon their NG to perform SAD, generally providing broad authority for the use of militias to quell domestic disturbances or assist in disaster relief when local and state government civil resources have been exhausted....During a SAD response, the states may use the federal equipment provided to the states' NG units for training purposes; however, the states must reimburse the Federal Government for the use of certain resources, such as fuel.<sup>24</sup>

States are responsible for funding the NG response during a SAD status, although the federal government may reimburse certain expenses in part under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act),<sup>25</sup> which may include SAD-associated costs. Under the preceding circumstances, DOD does not provide funding or exercise control over the NG in mission response or tasking.

Congress enacted Title 32 of the United States Code (styled Title 32-National Guard) into law in 1956. The code identified the NG organization, personnel, training, and service, supply and procurement while serving in the militia funded by DOD. (A fifth chapter, entitled “Homeland Defense Activities” was added in 2007).<sup>26</sup> The primary mission of the NG was to train members to perform dual missions: to fight in times of war or national emergency and support domestic operations. In 1964, Congress amended Title 32 and added section 502(f) to allow the NG to perform “other duty”; although this opened the door for operational missions, the NG status was limited to limited, specific, statutorily permitted operations under state control. In 1989, federal law permitted NG members to serve in full-time status to perform counter-drug missions; ten years later, congress authorized the NG to create and maintain teams to respond to weapons of mass destruction and civil support teams (WMD/CST).<sup>27</sup>

From the Uniform Militia Act of 1792—which provided the president with the authority to call out the militia<sup>28</sup>—through 9/11, legislation regarding NG units has provided for federal funding, but generally left control of the militia under state control. NG forces perform militia-based domestic operational missions when their governors mobilize them in state-controlled and -funded SAD status.<sup>29</sup> During a SAD response, the states may use the federal equipment provided to the states’ NG units for training purposes<sup>30</sup>; however, states must reimburse the federal government for the use of certain resources, such as fuel—although the Secretary of Defense may waive such reimbursement under certain conditions.<sup>31</sup> The 9/11 attacks occurred within the boundaries of three states: New York, Virginia, and Pennsylvania. However, as Title 32 existed in 2001, the law did not clearly authorize or permit the DOD to fund state-

controlled militia to respond to such a national crisis.<sup>32</sup> The criminal acts of 9/11 led to the most significant statutory changes to Title 32 regarding the domestic operational use of the NG since the nation's birth. In 2004, Congress added chapter nine to Title 32—the first addition to the code since its establishment in 1956—which authorized the federal government to fund, under state authority and control, the NG to perform a wide range of homeland defense activities.

“The term ‘homeland defense activity’ means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.”<sup>33</sup> This chapter demonstrated a rather dramatic divergence from training restrictions to vinculum of training and operations. In 2006, Congress simplified the nexus further, partly in response to the DOD's failure to implement necessary regulations<sup>34</sup> by amending 32 USC Section 502(f) allowing for Title 32 to include “[s]upport of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.”<sup>3536</sup> Such authorization created a broader authority to use the NG in an operational Title 32 status. Although it represented a departure from traditional or historical funding, the concept is entirely endogenous to the American legal system.

The use of the NG in a state-controlled, federally funded operational status benefits the collective and individual United States in a number of ways; most significantly, it does so in a manner consistent with the intent and spirit of the Constitution. Status quo ante bellum is maintained, local authorities control the NG by

responding within their respective local communities, the states receive funding to protect local resources and structures as well as citizens—whose destruction could be a national crisis—and NG personnel benefit from additional and equitable legal protections and can routinely be integrated into support with civil authority.

### Perceptions

One of the most significant shifts in the thinking about 9/11 is what that attack translated into with regard to the United States, terrorism, and its opposite—counterterrorism—as well as what changed or did not change. In 2009, only eight years later, it is difficult to open any journal or article related to security or the military that does not announce: “On September 11, 2001, Americans realized they were no longer safe from Terrorism...”<sup>37</sup>; “In the wake of the 9/11 terrorist attacks, combating terrorism has become...”<sup>38</sup>; or “Time is passing. Yet, for the United States of America, there will be no forgetting September the 11th.”<sup>39</sup> It is common currency in public discussion in the United States to say the 9/11 terrorist attacks were one of the greatest epoch-defining discontinuities in American history. Volumes have been written in which many address or narrate of a “sea of change” or “new era of terrorism,” arguing that life will never be the same.

Regarding public mood and sentiment, the actual discontinuity undoubtedly exists; however, that discontinuity is, in reality, about the American preoccupation with terrorism. According to Taleb in his book The Black Swan, humans “[have a] hardwired heritage”<sup>40</sup> to learn specifics when they should be focused on generalities. They concentrate on what they already know and repeatedly fail to consider what they do not already know. Thus, human beings are unable to truly estimate opportunities; are too

vulnerable to the impulse to simplify, narrate, and categorize; and are not sufficiently open to understanding those who can imagine the “impossible.”<sup>41</sup>

For the American public, the danger from international terrorism seemed dreadfully—if not significantly—greater on September 12, 2001, than on September 10. “In fact it could be argued that the threat—remembering that ‘threat’ means the prospect of possibility of future harm—had actually gone down, because the long-planned 9/11 operation, once it was carried out, became part of our past and no longer in our future.”<sup>42</sup>

Nationalism has played a role in previous terroristic activities. On June 5, 1968, Sirhan Bishara Sirhan fired a .22 caliber Iver-Johnson Cadet revolver into presidential candidate Robert F. Kennedy in the kitchen of the Ambassador Hotel in Los Angeles.<sup>43</sup> According to Sirhan's mother, Mary Sirhan, he killed Kennedy because of his Arab nationalism: “What he did, he did for his country.” Further, Sirhan believed that he was deliberately betrayed by Kennedy's support for Israel in the June 1967 Six-Day War.<sup>44</sup>

More recently, an Islamic extremist threat actually existed for most—if not all—the 1990s. Ramzi Mohammed Yousef, a Kuwait national of Pakistani descent who was also known by dozens of aliases<sup>45</sup>, planned and attempted to blow up the World Trade Center in 1993 and release a cloud of cyanide gas to kill thousands. An admitted and self-proclaimed terrorist, Yousef's objective was to destroy the twin towers and kill as many people as possible. If the attack had gone as planned, it would have potentially killed tens of thousands of Americans. Instead, as we know, one tower did not fall on the other; moreover, rather than vaporizing, the cyanide gas burned up in the heat of the explosion. “Only” six people died. Yousef was convicted of “seditious conspiracy” by

The United States District Court for the Southern District of New York (SDNY), a federal district court with jurisdiction over New York, not a military tribunal. In January 1995, Yousef and his associates plotted to blow up eleven American commercial aircraft in one spectacular day of terrorist rage. The plot went array when Yousef fled his apartment in the Philippines after starting a fire while mixing the chemicals for the explosives.

The fact that Yousef failed and another group succeeded a few years later had nothing to do with changes in ideology, failed or failing states, motivations, intent to kill civilians, or even the basic tenet or cause of the base hatred for the United States. It simply remained an “epoch moment” for eight years. Americans tend to focus their attention and energy on the threat *du jour*, with an overemphasis on the newness and discontinuities of recent events.<sup>46</sup> They also tend to be unaware of events that provide a historical basis for more recent events. It is not necessary to go back to the medieval Islamic world or the French Revolution to understand the lexicon applied to terrorism today; the patterns of international terrorism provide an understanding for the context that terrorism is a legal issue when it occurs within one’s own borders.

In The Four Waves of Modern Terrorism, David C. Rapoport maintained that international terrorism made its initial appearance 125 years ago in Russia before spreading to Western Europe, the Balkans, and Asia, where it lasted for a generation. “Each [terrorism] wave’s name reflects its dominant but not its only feature.”<sup>47</sup> Rapoport argues the first wave, the “Anarchist Wave,” was the first truly international wave, followed by the “anti-colonial wave” (second wave), which began in the 1920s. Next was the “New Left Wave” (third wave) in the 1960s, ending around the turn of the century

and being replaced by the current fourth or “religious or anti-democratic” wave. The third wave arose about the same time as the Vietnam War; its dominate theme was a belief by the “terrorists” that government systems in general were fundamentally not democratic and unresponsive to the people. As governments became more democratic and revolutionary terrorists were defeated in one country after another, the third wave began to ebb in the 1980s. Moreover, international counter-terrorist cooperation became increasingly effective about this same time. The spirit of the fourth wave was born from the democratic idea that groups are inconceivable without significant measures of secularism<sup>48</sup>; thus, the fourth wave is religious in nature.

Studying such historical patterns helps explain what is new and what is not providing one accepts Rapport’s argument that these patterns tend to exist for 40 years or so and people have no reason not to expect “terrorism” of yet another kind at the end of the current wave or in response to actions addressing the current wave. Indeed, significant terrorism arose within the United States in the late 1960s and remained well into the mid 1970s. Some of these attacks included:

- The assassination of police officers by The Black Liberation Army (BLA), an underground, black nationalist-Marxist militant organization that operated in the United States from 1971 to 1981.<sup>49</sup>
- An active campaign of assassinations, bank robberies, and kidnappings conducted by the Symbionese Liberation Army (SLA),<sup>50</sup> a group of Berkeley radicals led by Donald DeFreeze, an escaped convict whose nom de guerre was "General Field Marshall Cinque Mtume." The word *Symbionese* comes

from the biological term *symbiosis*, referring to the interdependence of different species. It suggests the union of classes and races.<sup>51</sup>

- From 1968 to as late as 1989, the bombing of planes, offices, and museums, with more than 13 bombings occurring in the 1980s by anti-Castro Cubans<sup>52</sup>.

In Decade of Nightmares: The End of the Sixties and the Making of Eighties America, Philip Jenkins wrote extensively about how, during the mid-1970s, the United States was suffering one of the worst waves of terrorist violence in its history. Of course, no attack in this era came close to the mega-terror episodes of those in Oklahoma City or the 9/11 attacks. Yet even by the standards of contemporary Europe, significant deadly urban and political violence erupted in many parts of the country beyond New York and Washington. During that time, bombs were a near-ordinary occurrence within extremist political cultures.<sup>53</sup> The 1975 bombing at LaGuardia airport, attributed to Croatian extremists, injured 75 and killed 11 people—more than the first World Trade Center attack in 1993.

Some of the most active domestic militants of the 1970s were veterans of the late 1960s—the peak years of antiwar protest and black extremism. During the mid-1970s, the survivors of this era formed a loose confederation, drawn from the Weather Underground, the BLA, and Puerto Rican (FALN) nationalist movements.<sup>54</sup> The Weather Underground, an American radical left organization started by former members of the SDS<sup>55</sup>, following a declaration of war against the United States, perpetrated armed robberies and bombings in the Capitol in 1971; conducted a bombing of the Pentagon in 1972; planned and carried out multiple bank robberies; and conducted the bombings of a Bank of America Building, courthouse, police stations, and state prisons.<sup>56</sup> The

Weather Underground waged a low-level war against the United States government through much of the 1970s—bombing targets across the country that they considered emblematic. Meanwhile, as previously noted, the BLA murdered several police officers. In 1973, BLA member Joanne Chesimard (also known as Assata Shaur) killed a New Jersey police officer; following her escape from prison some years afterward, she found sanctuary in Cuba.<sup>57</sup> Some BLA members joined the Weathermen, FALN, and the Macheteros to maintain their organizational identity and remained a very active group of terrorists. The FALN alone in 1976 claimed over 30 bomb attacks in New York, Chicago, and Washington, DC. A January 24, 1975, bombing at New York's historic Franuces Tavern killed four and injured 60<sup>58</sup>. No nexus emerged to failed or failing states with regards to the BLA, SLA, SDS, or Weather Underground. The groups were, by any definition, terrorists within the American borders.

The preceding discussion offers only a few examples from a lengthy list of criminal acts that occurred in the 1970s and completely ignores the nearly 340 domestic acts of terrorism conducted in the United States from 1980 to 2001 against civilian-commercial and military targets, which in themselves involved an estimated 14,047 injured and 2,993 deaths.<sup>59</sup> Today, one can scarcely imagine such a passive attitude as that existing in the years prior to 2001. Even the innocent magnetic light emitting diode display grids featured in a theatre presentation can plunge a city into a near hysteria today.<sup>60</sup> Where was the “war on terrorism” then? Where were the recriminations, finger pointing, and the Patriot Act<sup>61</sup> or discussions of a need to amend or change the Posse Comitatus Act<sup>62</sup> to deal with this “terrorism”?

Paul R. Pillar, a former CIA analyst currently at Georgetown University, argued that—beyond the sheer lethality of a single event—it was the temper of the times. In the 1960s and 1970s, with the Watergate affair, the Vietnam War, stories of abuses of power and excess involving American security and intelligence services, whatever concern that existed about terroristic threat was completely overshadowed by the fear of our own governmental institutions and acts by the same. Far from a collective group passing something like the Patriot Act to expand the powers of any governmental institution, the impetus was on control of those powers.<sup>63</sup> Pillar further posited that United States policies regarding terrorism—more aptly, counter-terrorism—and accompanied perspectives and rhetoric are shaped by various political and ideological needs as well as trends beyond the need to stand up to terrorists.

One of these needs identifies how America thinks and talks about terrorism in the post-9/11 era.

We seem to have a yearning to identify and demarcate eras, and to define each one in terms of a single, overriding goal or principal. During our modern history, the Cold War served this purpose admirably for 4 decades, with the era defined in terms of a competition with a single superpower foe. In the decade following the collapse of the Soviet Union, pundits, politicians, political scientists, and [generals, DOD], struggled to come up with a comparably clear defining characteristic for the newest era and for a name to apply to the post-Cold War era, other than *the post-Cold War era* [emphasis added].<sup>64</sup>

The 9/11 attacks, with their corresponding audacity and catastrophic damage, in some ways were unparalleled in the American memory, defining that era as the era of “warring against terrorism.”<sup>65</sup> As Pillar pointed out, the intellectual simplicity of this kind of “*era labeling*” has advantages; however, due to the simplification, it rapidly develops into oversimplification.

The business of demarcating eras gets into another deeply based and distinctly American way of thinking. Americans tend to see themselves in a war, identified as “the war on terrorism,” that distinctly began on 9/11. However, as unprecedented as 9/11 was, President Bush’s declaration was not unique. A century prior, when an anarchist assassinated President William McKinley in September 1901, “President Theodore Roosevelt called for a crusade to exterminate terrorism everywhere.”<sup>66</sup> Such a way of viewing the struggle on counterterrorism is an established American perspective that transcends any one administration or political party. It is an American perspective that looks at how we deal with threats in a non-Clausewitzian lens. In other words, it does not regard a war on terrorism—or counterterrorism—as the continuation of politics by other means. Rather, it looks at war and peace in two unique and clearly distinct states, requiring different sets of rules and different resources—each with a clear beginning and distinct end.<sup>67</sup> As Walter Russell Mead pointed out in Special Providence, Americans like Jacksonians (described in the School of Andrew Jackson)<sup>68</sup> “see war as a switch that is either on or off. They don’t like the idea of violence on a dimmer switch.”<sup>69</sup>

### An Easy Transition or a Search for Relevancy

As discussed in preceding pages, Americans do enjoy era labeling. *Thus*, it should perhaps appear reasonable—or even expected—that the same is true for the Pentagon and related offices. When the Cold War ended, we thought the world had changed. It had, but not in the way we thought.

When the Cold War ended, the challenge began. Flushed with its success at averting global nuclear war, the Pentagon turned to searching for a vision to replace the

decades-long containment strategy used to counter the Soviet threat. Prior to 9/11, the closest description the Pentagon had to a complete view of the world was in describing it as chaotic and uncertain. The post-9/11 era defined the enemy, and the words *chaotic* and *uncertain* became attached to something tangible. Today, the role of the DOD has again been blurred by tasks and missions in homeland security and homeland defense arising in response to confusion—confusion in what is termed “new international security environment” versus post-Cold War needs.

It is tempting to lay such blame on officials in the Bush Administration; however, such an action is akin to confusing the midwife with the actual miracle of birth<sup>70</sup>, —one is a natural event, the other merely assists with the end process.

[One reason for] contemporary military involvement which relates to the issue of threat, might be termed the *Darwinian thesis*. Military progress is analogous to organisms in an environmental system. Development occurs largely in response to external pressures and threats. [In times of] major threat, especially wars, technological evolution is rapid because systems are sought to ensure survival. The costs and potential failures resulting from such headlong development are proportionally less important because the external threat looms above all else.<sup>71</sup>

The United States, along with former Cold War rivals—primarily Russia—used its military, whose primary purpose was defense against external enemies, as the primary instrument of national power. The continued use of that single instrument from the nation’s tool box resulted in a dilution of the awareness of its other instruments. The occasional use of a military in response to a real threat is a legitimate purpose and is consistent with the Clausewitzian perspective. However, such military responses bear almost no resemblance to rational countermeasure for counterinsurgency (COIN) operations within our borders as that which is developing in the United States because the tidy rationality of proportion between means and ends always breaks down.

Seeing or viewing criminal acts within the United States with a cold war myopia suggests the threat is equal to one posed by the former Soviet Union. Such an approach begs the question: Does terrorism in and of itself threaten the vital interests of the United States on par with the Cold War? A terrorist—just as any other criminal element—is capable of impacting daily life, yet no intelligent argument exists that it is a comparable threat to that of the Cold War era. If so, and if the Cold War ended partially because military competition was essentially a stalemate, how can such a stalemate ever exist between criminals and a military force? We as military policymakers must adopt a broader perspective on security and relegate terrorism to its proper place in the domain of law enforcement.

Dealing with terrorism is not about unity of command, which is a military necessity to ensure that military organizations focus the thinking of military commanders and political leaders toward concepts and methods of successful prosecution of wars and smaller military operations to minimize the effect from the fog of war. Addressing terrorism requires a unity of effort and the dismissal of the notion of unity of command from the military perspective—a perspective that, quite naturally, began when Secretary of State Colin Powell declared that the United States was "at war" with terrorism.<sup>72</sup> However, this statement made sense when using the term *war against terrorism* in the sense of a war against crime or against drugs: to create a mobilization of all available resources against a dangerous, antisocial activity—one that can never be entirely eliminated but can be reduced to, and kept at, a level that does not threaten social stability. "To declare war on terrorists or, even more literally, on terrorism is to accord terrorists a status and dignity they seek and that they do not deserve."<sup>73</sup>

Furthermore, the use of the term *war* is not merely one of pedantic semantics. The more dangerous consequences of the phrase creates the expectation of military action against some easily identifiable adversary—action leading to decisive results; a focus on military resources and not the first line of defense—namely, the local and state responders. Moreover, it leads to potentially dangerous assertions of “Among Federal agencies [the DOD] has the most experience in combating terrorism,”<sup>74</sup> as written by Lieutenant Colonel Adrian A. Erckenbrack, a special assistant for legislative affairs in the Office of the Secretary of Defense, and Aaron Scholer, a deputy military legislative assistant for Senator Joseph Lieberman. The assertion was preceded by the statement that “[t]he United States will become increasingly vulnerable to hostile attack on the American homeland...military superiority will not entirely protect us.”<sup>75</sup> The DOD must begin divesting itself of the roles of command and control and get itself in the mindset of providing assistance.

### Future Path

In the JFQ (issue 35), several paragraphs written under the heading “Reserve Components” appear to be tangentially supportive:

With the decline of the homeland protection role in the last century, the military became increasingly expeditionary, applying its power abroad to deter foreign threats to national interests. Turning back to homeland defense it is critical for the Armed forces to maintain their expeditionary character. [...] But securing the Nation is a fundamental mission that the Reserve component must be reorganized, trained, and equipped to accomplish.<sup>76</sup>

These statements appear supportive; however, the authors create a dichotomy in their argument in saying “The Quadrennial Defense Review (QDR) issued in 2001 concluded that defending America was the primary DOD mission and that policy would evolve

accordingly, NORTHCOM was designated to provide unity of command for this mission.”<sup>77</sup> This position fundamentally ignores local authority and does nothing to “attack terrorism”; rather, it adds to an already confused posture and fails to engage local law enforcement.

General Ralph E. Eberhart, NORTHCOM Commander, reportedly stated:

...military and civilians should be involved in developing "actionable intelligence" for the government. In September 2002, he told a group of National Guardsmen that the military and the National Guard should "change our radar scopes" to prevent terrorism. It is important to "not just look out, but we're also going to have to look in," he said, adding, "we can't let culture and the way we've always done it stand in the way."<sup>78</sup>

Such a statement unnecessarily invites concerns and criticism from civil liberty organizations. The other concern and result of such declarations is that hard distinctions subsequently develop between who has jurisdiction in homeland defense versus homeland security. Terrorists will exploit such distinctions; thus, we are potentially creating avoidable vulnerabilities. For example, when military force failed in Vietnam to achieve the desired result, the application of that force doubled—without any better success. Rather than evaluate the strategy, DOD doubled its efforts and, as COIN expert Sir Robert Thompson termed it, *squared the error*.<sup>79</sup> Terrorism is, admittedly, a complex problem; however, equally clear is that overacting and incorrect responses will create greater problems, regardless of how we square the power applied.

The United States is a democracy; more accurately, it is a republic—a nation with a system by which we the people choose representatives who, in turn, make policy decisions on our behalf. We are a nation in which citizens enjoy inalienable rights while governmental power is limited. The government’s role is to protect its population but, in the traditional American haste of establishing eras and presuming, we must do

something—regardless of what. We are playing to the terrorists, and little to no efforts are made to understand the terrorists or the idea that all incidents are in effect local. Only legally sound, proactive law enforcement techniques may be used to successfully co-opt intercepts or disrupt terrorist groups. Terrorists almost never refer to themselves as terrorists, and terrorism is a tactic they use to impact the other side. Terrorists call themselves soldiers and governments, no matter how oppressive, conducting only COIN operations.

Some would argue that domestic terrorism—particularly right-wing extremism—is irrelevant to a discussion focusing on homeland security and its brother homeland defense and, moreover, that right-wing extremists are amateurs compared to al Qaeda. A reminder of such an argument was discussed earlier in this paper—namely, al Qaeda failed in its first attempt to destroy the twin towers while, on April 19, 1995, right-wing extremist Timothy James McVeigh killed 168 people with a homemade slow-wave bomb, carrying out the deadliest act of terrorism within the United States prior to 9/11. Although no weapons of mass destruction (WMD) were found in Iraq (at least in public declarations), in the spring of 2004, a law enforcement raid turned up 800 grams of nearly pure sodium cyanide ready to be fashioned into a deadly bomb in a storage in Noondag, Texas. If used, it would have been powerful enough to kill everyone in a 30,000-square-foot building in minutes.<sup>80</sup> In addition, in early 2008, law enforcement recovered a 55 gallon drum of arsenic offered for underground sale by a small town farmhand in southeastern Oklahoma.

Right-wing terrorists differ from al Qaeda only in that they do not enjoy a formal state sponsorship. However, they continue to operate—and do so without safe haven

and without financing. Their ability to do so arguably makes them more of a formidable threat, not less of one.<sup>81</sup> Understanding the fundamental truth and methodologies of terrorists dictates that terrorism must not be allowed to play too large of a role in our strategy and must be relegated to its place. Terrorists are unhappy with the status quo; they lack the political power to modify the status quo by any peaceful means—at least within their time frame and absent external influence—and do not have the military power to compel a change.

In order for terrorist groups to effect change, they must do something to gain influence and thereby attract supporters. As Michael German points out:

They recruit in the places they find people who are similarly unhappy with the status quo: in prisons, among the unemployed. They seek idealistic young students eager to make a mark in the world. Typically there is a cleansing ritual to symbolize the separation of the group from the corrupt society; dress and dietary requirements are established, sexual taboos are either strictly enforced, or, as in the case of the Weather Underground, ceremonially violated. Sometimes there are physical manifestations of separation; neo-Nazi skinheads shave their heads, jihadists grow beards.

I have heard Richard Clarke, the former White House counterterrorism official, describe the jihadist movement as a series of concentric circles, with the smallest circle in the center representing hard-core al Qaeda members and the outer circles representing varying levels of support for the movement. I think this analogy is helpful, but my version is a little different in that it is generic to any terrorist group rather than specific to one. Imagine a series of concentric circles with the hard-core terrorist group at the center. In the next circle are supporters, who assist the group but do not participate directly in terrorist attacks. The third circle contains people who sympathize with the cause but who do not actively support the terrorists. In the fourth circle are people who the terrorists consider part of their “us community, but who do not identify themselves as part of a community represented by the terrorist group. White supremacists refer to this group as “sheeple,” whites who do not believe in a Jewish conspiracy to destroy their race. The fifth and final circle represents “them,” the population of others that support the status quo and benefit from it. Outside the circle is the oppressive force; the government, the Jewish conspiracy, communism, capitalism, the New World Order, whatever the terrorists are against...The core terrorist group must do something to gain influence among its supports....<sup>82</sup>

These “something” terrorists wait on the government to provide a severe government reaction to validate their position.

In Gillo Pontecorvo’s film, “The Battle of Algiers,” the description of the development of a terrorist organization mirrors the first part of the movie in which the National Liberation Front, known by its French acronym FLN, starts a terrorist campaign against French colonial forces in Algiers. The intelligence value of the original screenplay was it was written by an FLN terrorist, Yacef Saadi. In the film, as in real life, the security forces do overreact to the terrorist attacks, uniting the Algerian community behind the FLN. The French military react in heavy handed manner and succeed in breaking the FLN, but the public fallout from the abuse energizes the public resistance, undermines French support for the effort. France wins the battle of Algiers, but loses the war for Algeria. This is the crucial final stage of a terrorist campaign, when the people in the fifth circle as described by German start to believe their government is unjust and incapable of solving the terrorist problem. The film was made in 1967 but here, almost 42 years later, we find ourselves on the brink of that final stage, divided at home, alienated from allies abroad, fighting an enemy all over the globe that can strike when and where it wants.<sup>83</sup>

Such actions distract us from the primary requirements of dealing with criminals, thereby creating vulnerabilities. Just as the Lilliputians—those 6-inch tall inhabitants of Lilliput in Jonathan Swift’s novel—were not able to individually do more than annoy the main character, collectively they compel Gulliver to surrender. In other words, the Lilliputians’ distraction needles the inherent structure and causes ambiguity.

#### The Authority or Responsibility Ambiguity

Since its establishment in October 2002, NORTHCOM’s need to exist in its current form has remained questionable. In fact, its current form adds to the confusion between homeland defense and homeland security. In 2002, while speaking of NORTHCOM, Secretary of Defense for Homeland Security Peter Vepra noted, “[what it] would bring to the fight is that unity of thought, unity of effort and ability to plan for catastrophic situations we have not been able to concentrate on....but NORTHCOM will

add another layer of bureaucracy when *civil authorities call* [emphasis added] on the military for aid.”<sup>84</sup> In 2003, Verga, as the Principle Deputy Assistant Secretary of Defense for Homeland Defense, described how his office would work with state and local authorities in the event of an attack on the United State where local authorities would initially respond, calling for state or regional support, if needed. In the event that federal resources are required, the Homeland Security Department will assess the problem and determine what is needed, then turn to federal agencies for assistance.<sup>85</sup>

In contrast, a Government Accountability Report to Congress outlined NORTHCOM'S Homeland Defense Mission statement:

To carry out its homeland defense mission, NORTHCOM is to conduct operations to deter, prevent, and defeat threats and aggression aimed at the United States. According to Joint Publication 3-27, DOD is the primary federal agency for homeland defense operations, and NORTHCOM is the combatant command responsible for commanding and coordinating a response to homeland defense incident. In this case, the chain of command is relatively straightforward: other DOD commands and federal agencies provide support to NORTHCOM....<sup>86</sup>

When contrasting the preceding statements, the dichotomy between what NORTHCOM and by extension DOD and other federal agencies view as to their role regarding homeland security begins to clarify the idea that NORTHCOM, from a Title 10 perspective, is a Cold War relic and neither NORTHCOM nor DHS can actively engage in a “war on terror.”

Reconciling the preceding to FEMA's incident management concept model, in which civil support is based on a tiered response to an incident, incidents are managed at the lowest jurisdictional level and supported by a request for additional support as needed. Yet this seems problematic. In short, a city may have the necessary resources to deal with an incident but, if necessary, sends a request for support to county, parish,

or borough authorities. In the event that additional support is required, this process is repeated as necessary up the line to the next level of civilian control. If support is required from other states, support is obtained via the Emergency Management Assistance Compact (EMAC). EMAC deployments are legal contracts, not arbitrary mobilizations. This clearly defined mission means that, through EMAC, state authorities are able to expedite and streamline the delivery of assistance among member states. To protect state sovereignty, the compact uses established protocols that allow for reimbursement from the requesting state to all assisting states. EMAC also has procedures to resolve workers' compensation, licensure, and liability issues.<sup>87</sup>

Undoubtedly, a "unity of command" does not exist with regard to civil authority in an interface between NORTHCOM and its mission statement. To those that would argue to the contrary, the question becomes: At what point does NORTHCOM assume a jurisdiction for a barricaded team in a local bank threatening to detonate a "dirty bomb" or what is the notification mechanism? This of course is an oversimplification of the issue; however, the uncertainty regarding who is responsible for tasks regarding NORTHCOM's mission statement, as previously defined, is essential to the problem in dealing with criminal matters within the several states and territories. Equally critical will be the complications of the effect of a request for support subsequently denied, since under NORTHCOM their support decisions are subject to internal review and acceptance or denial when not directed by Command Authority. The time spent in efforts to unravel the interwoven interagency relationships or in an effort to work through parochial territorialism waste critical time and just as importantly waste budgeted dollars.

The US fifty four states and territories include more than 14,254 law enforcement agencies representing over 675,734 sworn law enforcement officers (LEO) and an additional 294,85 civilian employees within those agencies. In addition, support for those LEO's involves an estimated 559,566 other civilian employees in 18,822 cities and towns with populations totaling more than 278 million people.<sup>88</sup> This number excludes private security and correctional officers as of October 31, 2004.<sup>89</sup> 7,630 of those cities have a population under 10,000, with a near equal number of cities having a population between 10,000 and 25,000. The remaining cities have populations in excess of 25,000, with 580 having populations greater than 100,000. In such an environment, the unity of command is not only extraordinarily complex, but virtually impossible to achieve. The next best alternative is unity of effort, which must come from a bottom-up perspective, as established in FEMA's incident command model. In such a model, someone is in a position to make decisions based on the picture as they see it without other persons of equal authority attempting to seize control based on other organizational interests.

Increased law enforcement authorities or the increased militarization of homeland security is neither a panacea nor a substitute for a comprehensive strategy to address and/or deal with terrorism at local levels. Both increased police power and military inclusion pose a risk to the very fabric of American society and are often not needed. The focus must be on training programs such as the State and Local Anti-Terrorism Training (SLATT) Program under the Department of Justice, which has delivered specialized anti-terrorism training to 10,525 federal, state, local, and tribal officers in more than 112 events around the country.<sup>90</sup> The fact that no significant or catastrophic

attacks on the United States have occurred since 9/11 is due in no small part to law enforcement at all levels and can only be maintained if a mechanism is in place to communicate, coordinate, cooperate, and strengthen information exchanges with state, local, and tribal governments and law enforcement to ensure safety. Moreover, despite the recognition that homeland defense or security funding must be directed to address shortcoming since managing the consequences of a catastrophic attack on the United States homeland would be a complex and difficult process, the first priority should be to build up and augment state and local response capabilities.<sup>91</sup>

After Hurricane Katrina, the Joint Advisory Committee on Communications Capabilities of Emergency Medical and Public Health Care Facilities (JAC) recommended a systematic, coordinated, and comprehensive strategy to improve emergency communications throughout the ranks of first responders and public health facilities. The strategy encompassed all components in the chain of emergency response—spanning receipt of a 9-1-1 call, EMS dispatch, onsite communications, transport communications, hospital communications, interagency communications and coordination, treatment of victims, and identification of events.<sup>92</sup> Little has been done to equip first responders with access to radios, telephones, or video conferencing capabilities that can support communications with city-to-city, county-to-county, or other federal emergency preparedness, let alone NG leaders.<sup>93</sup> This equipment must be available to first responders in local communities. The defense establishment will not be the first responder or lead agency in preventing or detecting terrorism and should completely divest itself of that notion or idea, particularly should it find itself in such an

environment that it has little means to electronically communicate directly with the civilian authorities in executing such an effort.

Even the DOD doctrine of Immediate Response Authority that presumes to allow commanders to act creates ambiguity and its self, is not well understood by the military. The doctrine allows commanders to provide resources, gives assistance to civil authorities without prior declarations of the Stafford Act if disaster overwhelms the capability of local authorities, and necessitates action “to prevent human suffering, save lives, or to mitigate great property damage.”<sup>94</sup> The immediate response authority may also include law enforcement activities ordinarily prohibited by the PCA. The controlling directive does not require a request from state or local officials, but states that:

DOD Components shall not perform any function of civil government unless necessary on a temporary under conditions of Immediate Response. Any Commander who is directed, or undertakes, to perform such functions shall facilitate the reestablishment of civil responsibility at the earliest time possible.<sup>95</sup>

No provision exists in law for the immediate response authority often cited beyond the actions of General Frederick Funston, in charge during General Greely’s absence, who dispatched approximately 1,700 troops from Forts McDowell and Miley before 10:00 a.m. on April 18, 1906,<sup>96</sup> in response to the San Francisco earthquake. What is generally not quoted is the April 21 telegram sent to General Funston by then Secretary of War Taft:

Word comes to the Associated Press that you and Mayor Schmitz are having some conflict of jurisdiction in respect to police matters. Of course as long as you are assisting him, his orders must control, and you must merely conform to his judgement [sic] so far as police matters are concerned....<sup>97</sup>

What the immediate response authority actually does is allow the “local commander, *when time does not permit prior approval from higher headquarters,*

[emphasis added] to provide assistance to local authorities in the case of emergencies... or take necessary action to respond to *requests of civil authorities* [emphasis added].”

### Leadership Considerations

In the event of a crisis or significant event local authorities will respond with the available civilian assets, consistent with their respective emergency management plans. Where necessary, the execution of action in accordance with EMAC's will be involved; NG units may or may not be required. If state NG resources are required, each affected governor has multiple avenues open to their office. In each instance, a clear path of civilian authority exists up the chain to address incidents. Where the process breaks down --is the clear definition and lines of authority beyond state levels and the accessibility of assets or resources available at the request of the governor. Title 10 forces must stop turf battles and relevancy seeking with regard to homeland security. “The Pentagons role is to stop terrorists in their home bases... or in the air or at sea, before they reach the United States “<sup>98</sup> and as a result Southern Command (SOUTHCOM), Pacific Command (PACOM), European Command (EUCOM) and Central Command (CENTCOM) provide the security abroad in concert with other allies.

A second consideration is North American Aerospace Defense Command (NORAD) returns to its former role and status to include retaining control of NG tactical aircraft and other measures necessary taken to deter, detect, or destroy hostile air threats against the US homeland. US Air defenses would destroy, nullify, or reduce the effectiveness of aircraft, and manned and unmanned missiles. The intrinsic speed at which an airborne craft can threaten US interests and the ability to interdict such a treat

requires rapid assessment and decisions. A short decision chain is required for an effective response.

Thirdly, National Guard Bureau (NGB) is dismantled and integrated into the Joint Staff functional areas (J1, J2, etc) for communications and planning both for crisis action planning and homeland security issues. Designate NORTHCOM as a Title 32 *Combatant Command* (emphasis added). The remaining and required NGB functions transferred to the NORTHCOM Joint Command. NORTHCOM then exists under the alternating leadership of a Title 32 or Coast Guard Four Star Flag Officer with two Deputy Commanders; one Title 10 Three Star Flag Officer, one Title 32 or Coast Guard Three Star Flag Officer. The service of the second deputy would not be the same service the NORTHCOM COCOM. This structure provides the necessary communication to the Joint Chiefs by way of the NG Four Star member of the Joint Chiefs. NORTHCOM would then resource visibility of the Air National Guard, minus tactical fighter air craft, for lift and transport capability; Army NG for response and support capability; and Cost Guard for border and coastal security and under its law enforcement role interface to Department of Homeland Security. The 54 states and territories, in a Title 32 status by assignment of their respective Adjutants General, would collectively make up the NG Joint Staffs (NGJS) within NORTHCOM in support of the Command in a manner similar to the Joint Staff and Joint Staff Crisis action team referred to here as a National Guard Joint Crisis Action Team (NGJCAT) and would interface the an EMAC in coordination with FEMA.

NGB would not act in a command role beyond resource analysis, resource planning and other inherent NG matters. The primary role and mission of NORTHCOM

in this configuration would be to provide a common operating picture with regard to all assets—personnel and equipment—as well as training levels, etc., and act as the central coordinator in concert with the states and federal requestor to provide assistance and, where required, NG military support in response to homeland defense and or security. As the NG, in a militia status operates on both side of the homeland security and homeland defense seam, as Scholar and Erckenbrack write:

The Army and Air National Guard are best suited for a homeland defense and security role. These two Reserve components have deep roots in their local communities. Furthermore, because most state adjutants general also serve as both emergency manager and homeland security director, they are engaged in intergovernmental issues as well as Federal and interagency matters. Operating outside existing arrangements or establishing new organizations that replicate those efforts would add bureaucracy, increase turf battles, and decrease efficiency on the state level.<sup>99</sup>

Since 9/11, the NG has operated with active duty military commands as well as federal and state government and has integrated on both interagency and intergovernmental levels around the clock.<sup>100</sup> Protection of its critical infrastructure has become a core NG mission, and the NG has been given the task of supporting and operating with civilian authorities.<sup>101</sup>

The final connection to the restructuring of NORTHCOM is the inclusion of the Coast Guard (CG), which --like the NG --operates in a unique role to support homeland security that does not raise constitutionally clouded issues. By including the CG, as the maritime arm of DHS, it no longer must vie or compete with the Navy in needless turf struggles; rather as the integrated component in homeland security it can focus on the primary goal of preventing criminal acts or in the apprehension of those who perpetrate or attempt to conduct such acts within the coastal water ways and ports.

Such a structure does not create magical thinking and no parallel military; each dependent on the other. Instead, Title 10 forces are released from any struggle for relevancy and remain positioned to deal with the threats aboard, as the framers of the country intended. The militia, in concert with the CG, is positioned to support civilian authorities in dealing with criminal acts and natural disaster or to engage, as necessary, on the ground within the several states and territories or to augment Title 10 forces in a peer-on-peer conflict.

The arguments, debates and discussion of the threat ranging from *war* to *criminal acts and crime* will continue to challenge any comprehensive strategy for homeland security and its brother homeland defense. The intrinsic danger is the sense that while homeland security and other civil support missions to include emergency preparedness activities, statutes, and legal authorities are clarified through legislative action the prevailing sentiment is DOD capable of operating against adversaries in the “seam,” so it really is not a problem.

The attacks of September 11, 2001, did not reveal the world was a very dangerous place, any more than it was in 1993, what was revealed are the struggles for relevancy. Those continued struggles, regardless of how well intended, undermines a responsibility of the United States government to protect its citizens and remain faithful to the Constitution and the way of life it guarantees.

### Endnotes

<sup>1</sup> James H. Toner, *The American Military Ethic : A Meditation* (New York Praeger Publishers, 1992), 204.

<sup>2</sup> Paul R. Pillar, *Terrorism and U.S. Foreign Policy* (Brookings Institute: Brookings Institution Press, 2004), xxix.

<sup>3</sup> Section 8 of the U.S. constitution in part “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;...To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

<sup>4</sup> Donald H. Rumsfeld, *National Military Strategic Plan for the War on Terrorism* (Washington, DC: The Pentagon February 2006), 1.

<sup>5</sup> President George W. Bush, “*State of the Union*” January 20, 2004 [http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext\\_012004.html](http://www.washingtonpost.com/wp-srv/politics/transcripts/bushtext_012004.html) (accessed December 5, 2008).

<sup>6</sup> Department of Homeland Security, “*General Information About Terrorism*”, <http://www.fema.gov/hazard/terrorism/info.shtm> Accessed December 5, 2008.

<sup>7</sup> Tom Ridge, *The National Response Plan*, (Washington, DC: Department of Homeland Security December 2004), 73., <http://www.scd.state.hi.us/documents/nrp.pdf> (accessed January 7, 2009).

<sup>8</sup> U.S. Department of Justice, Federal Bureau of Investigation *FBI Policy and Guidelines* 2002-2005, iv.

<sup>9</sup> Ralph Wipfli, “State of the U.S. Military Reserve Components,” Colloquium Brief U.S. Army War College and 21 Century Defense Initiative of the Brookings Institution. (Carlisle Barracks, PA: U. S. Army War College).

<sup>10</sup> U. S Constitution, Article 1, Section 8, Cl. 15.

<sup>11</sup> Ibid, Art. 1, Section 8, Cl.16.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., Amendment II.

<sup>14</sup> Ibid.

<sup>15</sup> “For the Militia” *New York Times*, June 11, 1887 <http://query.nytimes.com/mem/archive-free/pdf?res=9C00EFD81730E633A25752C1A9609C94669FD7CF> (accessed January 10, 2009).

<sup>16</sup> Ibid.

<sup>17</sup> Jeff Bovarnick, “Perpich v. United States Department of Defense: Who's in Charge of the National Guard?” *New England Law Review* 26, 1991, <http://legal-dictionary.thefreedictionary.com/National+Guard> (accessed January 18, 2009).

<sup>18</sup> Russell Frank Weigley, *History of the United States Army* (University of Michigan Ann Arbor, MI; Macmillan, 1967), 320-321.

<sup>19</sup> Harvard Law Review Association, *Harvard Law Review Volume XXX* (Cambridge, MA: Harvard Law Review Association, 1917), 177 <http://books.google.com/books?id=qQQtAAAAIAAJ&pg=RA1-PA177&dq=dick+act> (accessed January 14, 2009).

<sup>20</sup> William M. Donnelly, "The Root Reforms and the National Guard," 3 May 2001 Linked from *U.S. Army Center of Military History Homepage*. <http://www.history.army.mil/documents/1901/Root-NG.htm> (accessed January 18, 2009).

<sup>21</sup> Clarence Arthur Berdahl, *War Powers of the Executive in the United States*, (Buffalo, New York: Wm. S. Hein Publishing, 2003), 134.

<sup>22</sup> US Department of the Army, "World War I: The First Three Years," in *American Military History* (Washington, DC: US Department of the Army, Office Of The Chief of Military History, 1898), <http://www.history.army.mil/books/AMH/AMH-17.htm> (accessed December 12, 2008). Some of the President's growing sympathy for the cause of preparedness could be traced to increasing concern on the part of members of his administration, most notably the Secretary of War, Lindley M. Garrison. As an annex to the Secretary's annual report in September 1915, Garrison had submitted a study prepared by the General Staff entitled, "A Proper Military Policy for the United States." Like proposals for reform advanced earlier by Stimson and Wood, the new study turned away from the Uptonian idea of an expansible Regular Army, which Root had favored, to the more traditional American concept of a citizen army as the keystone of an adequate defense force. Garrison proposed more than doubling the Regular Army, increasing federal support for the National Guard, and creating a new 400,000-man volunteer force to be called the Continental Army, a trained reserve under federal control as opposed to the state control of the Guard. Although Wilson refused to accept more than a small increase in the Regular Army, he approved the concept of a Continental Army. Garrison's proposal drew support, too, in the Senate, but not enough to overcome adamant opposition in the House of Representatives from strong supporters of the National Guard. Influential congressmen countered with a bill requiring increased federal responsibility for the Guard, acceptance of federal standards, and agreement by the Guard to respond to a Presidential call to service. Under pressure from these congressmen, Wilson switched his support to the Congressional plan. This, among other issues, prompted Garrison to resign.

<sup>23</sup> Christopher R. Brown, "Been there, doing that in a Title 32 status the National Guard now authorized to perform its 400-year old domestic mission in Title 32 status", *Army Lawyer*, May 2008, [http://findarticles.com/p/articles/mi\\_m6052/is\\_2008\\_May/ai\\_n27910557](http://findarticles.com/p/articles/mi_m6052/is_2008_May/ai_n27910557) (accessed January 20, 2009).

<sup>24</sup> *Ibid.*, 6.

<sup>25</sup> *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, PL 100-707, signed into law November 23, 1988; amended the *Disaster Relief Act of 1974*, PL 93-288. This Act constitutes the statutory authority for most Federal disaster response activities especially as they pertain to FEMA and FEMA programs and for allocation of payment to the National Guard for specific duties and tasks.

<sup>26</sup> *Title 32*, US Code Collection, Cornell University Law School, US Code Collection, <http://www.law.cornell.edu/uscode/> (accessed January 25, 2009).

<sup>27</sup> *Strom Thurmond National Defense Authorization Act for Fiscal Year 1999*, Public Law 105-261, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess. (October 17, 1998), 12,310(c)(1)(A).

See also U.S. Department Of Defense, Quadrennial Defense Review Report 16 (2006), <http://www.dod.mil/pubs/pdfs/QDR20060203.pdf> (accessed January 25, 2009) ("The National Guard is fielding 55 WMD Civil Support Teams (CSTs)--in each state, territory and District of Columbia. These 22-member teams can provide critical communications links, quick assessment of damage from any WMD attack and consequence management support to local, state, and Federal agencies.").

<sup>28</sup> *Militia Act of 1792*, Second Congress, Session I. Chapter XXVIII, Enacted May 2, 1792, [http://www.constitution.org/mil/mil\\_act\\_1792.htm](http://www.constitution.org/mil/mil_act_1792.htm) (accessed January 12, 2009).

<sup>29</sup> U.S. Department Of The Army And The Air Force, National Guard Reg. 500-1/*Air National Guard Instr.* 10-8101, Military Support To Civil Authorities para. 1-4a (1 Feb. 1996) ("During periods of state active duty, costs will be funded by the state....").

<sup>30</sup> *32 United States Code 710 - Sec. 710*. Accountability for property issued to the National Guard (2000).

<sup>31</sup> U.S. Department of the Army, Emergency Employment Of Army, Army Regulation 500-50 (Washington, DC: U.S. Department of the Army (June 13, 2008).

In accordance with Title 10 U.S. Code, § 377, reimbursement may be required from a federal agency to which law enforcement support or support to a National Special Security Event is provided by National Guard personnel performing duty under Title 32 U.S. Code, § 502 (f). The Secretary of Defense may waive reimbursement."

<sup>32</sup> *United States Code – Title 32: National Guard Section 101-716* (2001) Repealed Pub. L. 107-314, div. A, title V, Sec. 512(c)(2), Dec. 2, 2002, 116 Stat. 2537, provided that: "The provisions of law repealed by paragraph (1) [repealing sections 328 to 333 of this title] shall continue to apply with respect to courts-martial convened in the National Guard not in Federal service before the date of the enactment of this Act [Dec. 2, 2002]."

<sup>33</sup> *32 United States Code Section 901* January 3, 2007. <http://uscode.house.gov/download/pls/32C9.txt> (accessed January 20, 2009).

<sup>34</sup> Christopher R. Brown, "Been there, doing that in a Title 32 status the National Guard now authorized to perform its 400-year old domestic mission in Title 32 status", *Army Lawyer*, May 2008. [http://findarticles.com/p/articles/mi\\_m6052/is\\_2008\\_May/ai\\_n27910557](http://findarticles.com/p/articles/mi_m6052/is_2008_May/ai_n27910557) (accessed January 22, 2009) "Thus, after events seemingly tailor-made for the use of the new Title 32, Chapter Nine operational status, the states lacked precedence of its authorized use. Further, DOD had not published the required regulations implementing the authority. 32 U.S.C.S. [section] 903 (LexisNexis 2008).

<sup>35</sup> John Warner *National Defense Authorization Act for Fiscal Year 2007*, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:h5122enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5122enr.txt.pdf) (accessed January 25, 2009).

<sup>36</sup> 32 United States Code Chapter 5 Section 502(f)(2)(a) in effect as of January 3, 2007 [www.gpoaccess.gov](http://www.gpoaccess.gov) (accessed January 25, 2009).

<sup>37</sup> Thomas D. Cook, *The Posse Comitatus Act: An act in need of Regulatory Update*, Strategy Research Project (Carlisle Barracks, PA:U.S. Army War College, March 15, 2008), 1.

<sup>38</sup> U.S. Government Accountability Office, *Combating Terrorism, Statement for the Record Subcommittee on Border, Maritime, and Global Counterterrorism, Committee on Homeland Security, House of Representatives* (Washington, DC: U.S. Government Accountability Office, October 2007), 1.

<sup>39</sup> George W. Bush, *1<sup>st</sup> Address to the General Assembly of the United Nations in New York City* on (November 10, 2001.) <http://www.september11news.com/PresidentBushUN.htm> (accessed December 12, 2008).

<sup>40</sup> Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable*, (New York, NY: Random House, 2007), 529.

<sup>41</sup> *Ibid.*, 151.

<sup>42</sup> Paul R. Pillar, *Law Vs. War: Competing Approaches to Fighting Terrorism*, (Carlisle Barracks: U.S Army War College, July 2005) [www.strategicstudiesinstitute.army.mil/pdffiles/pub613.pdf](http://www.strategicstudiesinstitute.army.mil/pdffiles/pub613.pdf) (accessed November 07, 2008).

<sup>43</sup> Mel Ayton, "The Robert Kennedy Assassination: Unraveling the Conspiracy Theories", May 8, 2005, *Crime Magazine An Encyclopedia of Crime*, May 8, 2005) <http://www.crimemagazine.com/05/robertkennedy,0508-5.htm> (accessed January 30, 2009).

<sup>44</sup> *Ibid.*

<sup>45</sup> Michael McCurry. "State Department; statements by Spokesman Michael McCurry on Cuba and reward for arrest of terrorist Ramzi Ahmed Yousef", *US Department of State Dispatch*. August 2, 1993. [http://findarticles.com/p/articles/mi\\_m1584/is\\_n31\\_v4/ai\\_13267943](http://findarticles.com/p/articles/mi_m1584/is_n31_v4/ai_13267943) (accessed February 5, 2009).

"He was born on May 20, 1967, and travels on an Iraqi passport. He may also claim to be from the United Arab Emirates. In the past, Yousef has used the aliases Ramzi Yousef Ahmad, Rasheed Yousef, Ramzi Ahmad Yousef, Kamal Abraham, Muhammad Azan, Ramzi Yousef, Rashid Rashid, Kamal Ibrahim, Ramzi Yousef Ahmed, and Abdul Bassett."

<sup>46</sup> Pillar, *Law Vs. War: Competing Approaches to Fighting Terrorism*, 4.

<sup>47</sup> *Ibid.*, 47.

<sup>48</sup> *Ibid.*, 65.

<sup>49</sup> Jim Herron, Zamora, and Demian Bulwa "4 Accused In 1971 Cop Killing Appear In Court," *San Francisco Chronicle*, January 29, 2007, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/01/29/BAGO7NQUV217.DTL> (accessed December 12, 2008).

<sup>50</sup> Associated Press "Timeline for Symbionese Liberation Army," *The Rick A. Ross Institute* January 17, 2002, [http://www.google.com/archivesearch?hl=en&rlz=1G1GGLQ\\_ENUS252&resnum=0&q=symbionese+liberation+army&um=1&ie=UTF-8&scoring=t&sa=X&oi=timeline\\_result&resnum=12&ct=title](http://www.google.com/archivesearch?hl=en&rlz=1G1GGLQ_ENUS252&resnum=0&q=symbionese+liberation+army&um=1&ie=UTF-8&scoring=t&sa=X&oi=timeline_result&resnum=12&ct=title) (accessed December 15, 2008).

<sup>51</sup> Chris Suellentrop, "What is the Symbionese Liberation Army?" *Slate*, January 24, 2002, <http://www.slate.com/?id=2061138> (accessed December 15, 2008).

<sup>52</sup> Philip Jenkins, *Decade of Nightmares: The End of the Sixties and Making of Eighties America*, (New York, NY: Oxford University 2006) 57-58 <http://books.google.com/books?id=lqWW4Ln77QEC> (accessed December 18, 2008).

<sup>53</sup> Philip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America* (Oxford University Press US, 2006,) 57

<sup>54</sup> *Ibid.*, 57

<sup>55</sup> Students for a Democratic Society Formed by Tom Hayden in 1962 was counter-cultural movement known collectively as the New Left, Students for a Democratic Society (SDS) was a radical organization that aspired to overthrow America's democratic institutions, remake its government in a Marxist image, and help America's enemies defeat her sons on the battlefield in Vietnam. The group developed from the Student League for Industrial Democracy, the youth branch of the socialist League for Industrial Democracy. In 1969 SDS began imploding into factions. One of them, a group calling itself Weatherman, was elected to SDS leadership and proclaimed that the time had come to launch a race war on behalf of the Third World and against the United States. The new entity dissolved SDS and formed a terrorist cult in its place, which was given the name Weather Underground.

<sup>56</sup> Claire Suddath, "A Brief History of The Weather Underground," *Time on Politics*, October 2008, <http://www.time.com/time/politics/article/0,8599,1847793,00.html> (accessed December 12, 2008).

<sup>57</sup> Phillip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America*, (Oxford, NY: Oxford University Press, 2006), 57.

<sup>58</sup> Pearson Education, Inc, "Terrorist Attacks (Within The United States Or Against Americans Abroad)" *Info Please*, <http://www.infoplease.com/ipa/A0001454.html> (accessed December 19, 2008).

<sup>59</sup> U.S. Department of Justice, Federal Bureaus of Investigation Home Page, [http://www.fbi.gov/publications/terror/terror2000\\_2001.htm](http://www.fbi.gov/publications/terror/terror2000_2001.htm) (accessed December 20, 2008).

<sup>60</sup> Zane Scheuerlein, "The Boston Bomb Scare: Youth Culture as Terrorist threat," National Coalition Against Censorship Online December 20, 2008, [http://74.125.47.132/search?q=cache:Rr60THxYJN8J:ncac.org/YFEN/ExpressYourself\\_OpEds/OpEd\\_BostonBombScare.cfm+teenage+prank+labeled+terrorist+event&hl=en&ct=clnk&cd=3&gl=us](http://74.125.47.132/search?q=cache:Rr60THxYJN8J:ncac.org/YFEN/ExpressYourself_OpEds/OpEd_BostonBombScare.cfm+teenage+prank+labeled+terrorist+event&hl=en&ct=clnk&cd=3&gl=us) (accessed December 15, 2008).

<sup>61</sup> The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act

of 2001." Signed into law 45 days after 9/11, The act increased the ability of law enforcement agencies to search telephone, e-mail communications, medical, financial and other records; eased restrictions on foreign intelligence gathering within the United States; expanded the Secretary of the Treasury's authority to regulate financial transactions, particularly those involving foreign individuals and entities; and enhanced the discretion of law enforcement and immigration authorities in detaining and deporting immigrants suspected of terrorism-related acts. The act also expands the definition of terrorism to include domestic terrorism, thus enlarging the number of activities to which the USA PATRIOT Act's expanded law enforcement powers can be applied.

<sup>62</sup> Posse Comitatus Act, specifically Title 18, U.S. Code, Section 1385 States: "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."

<sup>63</sup> Paul R. Pillar, *Law Vs. War: Competing Approaches to Fighting Terrorism*, 6.

<sup>64</sup> Ibid., 6.

<sup>65</sup> Ibid., 6.

<sup>66</sup> David C. Rapoport, "Four Waves of Modern Terrorism," *UCLA Berkeley Center for International Relations Online*, June 5, 2006, <http://www.international.ucla.edu/burkle/article.asp?parentid=47153> (accessed December 27, 2008).

<sup>67</sup> Paul R. Pillar, *Terrorism and U.S. Foreign Policy*, (Washington, DC: Brookings Institution Press, 2004), xxvi

<sup>68</sup> Walter R. Meade, *Special Providence: American Foreign Policy and How it Changed the World*, (New York: Routledge, 2002), 218-264.

<sup>69</sup> Ibid., 254.

<sup>70</sup> Thomas P.M. Barnett, *The Pentagon's New Map, War and Peace in the Twenty First Century* (New York, NY: The Penguin Group, 2005), 1-3.

<sup>71</sup> Zhivan J. Alach, "Slowing Military Change", (Carlisle Barracks, PA: U.S. Army War, October 2008), 25.

<sup>72</sup> Michael Howard, "War Against Terrorism," *RUSI Conference Address* October 30, 2001, <http://www.preparingforpeace.org/howard.htm> (accessed February 6, 2009).

<sup>73</sup> Michael Howard, "What's In A Name?: How to Fight Terrorism", *Foreign Affairs* (January/February 2002) <http://www.foreignaffairs.org/20020101facomment6553/michael-howard/what-s-in-a-name-how-to-fight-terrorism.html> (accessed January 30, 2009).

<sup>74</sup> Adrian A. Erckenbrack and Aaron Scholer, "The DOD Role in Homeland Security" *Joint Forces Quarterly, A professional Military Journal*, (Issue 35): 34.

A magazine of general interest to military professionals Published for the Chairman of the Joint Chiefs of Staff, by the Institute for National Strategic Studies National Defense University, Washington, D.C.

<sup>75</sup> Ibid.

<sup>76</sup> Erckenbrack and Scholer, "The DOD Role in Homeland Security," 36.

<sup>77</sup> Ibid.

<sup>78</sup> Robert Block and Gary Fields, "Is Military Creeping Into Domestic Law Enforcement?" *Wall Street Journal*, March 9, 2004.

<sup>79</sup> Robert Thompson, "Squaring the Error," *Foreign Affairs*, No. 46, (April 1968): 442-53 <http://www.foreignaffairs.org/19680401faessay46302/sir-robert-thompson/squaring-the-error.html>

<sup>80</sup> Camille Jackson, "Terror, American Style," *Southern Poverty Law Center Intelligence Report*, Spring 2004, <http://www.splcenter.org/intel/intelreport/article.jsp?aid=378> (accessed February 15, 2009).

<sup>81</sup> Michael German, "Law vs. War, Competing Approaches to Fighting Terrorism" *Conference Report* (Carlisle Barracks, PA: U.S. Army War College, July 2005), 12.

<sup>82</sup> Ibid., 12.

<sup>83</sup> Ibid., 13.

<sup>84</sup> Lee A. Newton, *NORTHCOM: The Missing Half of a Two-Piece Puzzle*, (Newport RI: Naval War College, Joint Military Operations Dept, February 14, 2005), 9.

<sup>85</sup> Ibid., 9.

<sup>86</sup> U.S. Government Accountability Office, *Homeland Defense: Report to Congressional Requestors* (Washington, DC: U.S. Government Accountability Office, April 2008), 9.

<sup>87</sup> Beverly Bell, "The Emergency Management Assistance Compact – An Introduction," <http://www.emacweb.org/?1530> (accessed January 28, 2009).

Though officially ratified by Congress in 1996 as law, after Hurricane Andrew hit Florida in 1992. An EMAC is neither a federal agency nor part of the federal government. Administered by the National Emergency Management Association, the compact is an agreement among all states, the District of Columbia, Puerto Rico and the Virgin Islands, to provide assistance across state lines when a disaster occurs. An EMAC is a state-to-state agreement and does not move resources from one locality to another. Political subdivision in a state that offer aid must work through their respective state emergency management office. The EMAC operates under the standards of incident command.

<sup>88</sup> Federal Bureau of Investigation, Uniform Crime Report Table 74, <http://www.fbi.gov/ucr/> (accessed February 15, 2009).

<sup>89</sup> Ibid.

<sup>90</sup> U.S. Department of Justice, "Fact Sheet: Supporting State and Local Law Enforcement Accomplishments 2001 – 2008", November 10, 2008 <http://www.usdoj.gov/opa/pr/2008/November/08-opa-993.html> (accessed February 22, 2009)

<sup>91</sup> The United States Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change The Phase III Report of the U.S. Commission on National Security/21st Century*, (Washington DC: U.S. Government Printing Office, January 31, 2001), 14.

<sup>92</sup> Joint Advisory Committee On Communications Capabilities Of Emergency Medical And Public Health Care Facilities, *Report to Congress* (Washington, DC: Federal Communications Commission, February 4, 2008), 2-3.

<sup>93</sup> Ibid.

<sup>94</sup> U.S. Department of the Army, *Military Support to Civil Authorities*, Department of Defense Directive 3025.1 subsection 4.5 (1993) (Washington, DC: U.S. Department of Defense December 18, 2000).

<sup>95</sup> Ibid., Sub-Section 4.4.10.

<sup>96</sup> Jim Winthorp, "Use of Federal Troops for Law Enforcement during Crises: the "Immediate Response Authority", *Biot Report #268*: September 25, 2005, [http://www.semp.us/publications/biot\\_reader.php?BiotID=268](http://www.semp.us/publications/biot_reader.php?BiotID=268) (accessed February 10, 2009).

<sup>97</sup> Ibid.

<sup>98</sup> Harold Kennedy, "U. S Northern Command Actively Enlisting Partners," *National Defense*, (June 2004): 40.

<sup>99</sup> Erckenbrack and Scholer, "The DOD Role in Homeland Security"

<sup>100</sup> H. Steven Blum, "National Guard Capabilities for America." *The Officer* (December 1, 2004): 53.

<sup>101</sup> Newton, *NORTHCOM: The Missing Half of a Two-Piece Puzzle*, 13